STATE OF MICHIGAN

COURT OF APPEALS

LASHEEN WILLIAMS,

Plaintiff/Counterdefendant-Appellee,

v

A.I.C.H., a/k/a AUTOMOBILE INSURANCE COMPANY OF HARTFORD,

Defendant/Cross-Defendant-Appellant,

and

EMC MORTGAGE CORPORATION,

Defendant-Appellee,

and

PRICILLA ROBINSON, d/b/a DREAM BUILDERS,

Defendant/Counterplaintiff/Cross Plaintiff-Appellee,

and

TRAVELER'S PROPERTY CASUALTY INSURANCE COMPANY, CLAIMS, INC., and STUART COLLIS.

Defendants.

UNPUBLISHED
February 7, 2006

No. 256629
Wayne Circuit Court
LC No. 01-104827-CK

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant Automobile Insurance Company of Hartford (A.I.C.H.) appeals as of right from the trial court's denial of its motion for summary disposition and from the court's ultimate judgment in favor of plaintiff LaSheen Williams in this breach of contract action. We reverse.

I. Facts and Procedural History

Plaintiff's home, which was covered by a homeowner's insurance policy issued by defendant,[1] was damaged by two fires in the summer of 1999. Plaintiff secured her property following the initial fire in the hopes of repairing her home. However, the second fire severely damaged the structure and the city of Detroit was required to demolish the house as a safety hazard. Thereafter, plaintiff secured alternate rental housing. She then filed a claim with defendant for the loss of her home and personal belongings and for the cost of "additional living expenses" incurred as a result of the fire, including the rent on her temporary replacement housing.[2] Plaintiff's insurance policy provided, in relevant part, that defendant would "settle" a claim for a covered loss as follows:

> (1) . . . [W]e will pay the cost of repair or replacement, without deduction for depreciation, but *not exceeding the smallest* of the following amounts:
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> (a) The limit of liability under the policy applying to the building;
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> (b) The replacement cost of that part of the building damaged for equivalent construction and use on the same premises; or
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> (c) The amount actually and necessarily spent to repair or replace the damaged building.
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> * * *
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> (4) We will pay no more than the actual cash value of the damage until actual repair or replacement is complete. Once actual repair is complete, we will settle the loss according to the provisions of [section (1)] above . . . .
>
> (5) You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an actual cash value basis and then make claim *within 180 days after loss* for any additional liability on a replacement cost basis.[3]

On November 1, 2001, the parties reached an agreement regarding the payment of plaintiff's claim. Defendant had previously paid plaintiff $50,000 for damages to her personal belongings and $19,300 in additional living expenses. Defendant determined that plaintiff would be entitled

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[1] It appears from the record that the policy was actually issued through Traveler's Property Casualty Insurance Company, a junior division of defendant's corporation.

[2] Under the insurance policy, defendant agreed to cover, as an "additional living expense," "any necessary increase in living expenses incurred by [the insured] so that [the insured's] household can maintain its normal standard of living" in the event that the insured residence is rendered "uninhabitable" by a covered loss.

[3] Emphasis altered from original.

to $126,126.63 for the full cost of building repair or replacement. However, plaintiff opted to make an initial claim for the actual cash value of the building loss less her deductible. Pursuant to a predetermined formula, the actual cash value for plaintiff's loss was valued at $64,853.60. In their final written agreement, defendant warned plaintiff that, if she intended to file a claim for replacement costs, she was required, under the insurance policy, to do so within 180 days of November 1, 2001.

Although defendant had agreed to a payment on this claim with plaintiff, plaintiff could not reach an agreement with her mortgage holder, repair contractor, prior attorney, and her current landlord regarding the division of the insurance proceeds.[4] Therefore, plaintiff filed an action for declaratory relief against defendant and several other parties. In light of the previous agreement reached between plaintiff and defendant, the parties stipulated in writing to the dismissal of plaintiff's claims against defendant "with prejudice." In exchange, defendant agreed to submit the agreed-upon insurance proceeds into an escrow account pending the resolution of this action.[5] The parties further agreed that this amount "represent[ed] the full value of the remaining insurance claim in this suit." The trial court ultimately entered a stipulated judgment incorporating the parties' voluntary dismissal of the action.

In August of 2001, 21 months after signing her final agreement with the defendant and more than a year after her claims against the defendant had been dismissed with prejudice, plaintiff purchased a new home through a land contract. In apparent reliance on her ability to receive further insurance proceeds, plaintiff agreed to pay the full amount of the contract ($89,899) within six months. Plaintiff then filed a supplemental claim with defendant for replacement costs, which defendant denied because it was submitted beyond the 180-day window. As plaintiff's lawsuit regarding the distribution of her insurance proceeds was still pending in the trial court, she moved to bring defendant back into the lawsuit. Plaintiff contended that she was entitled to full replacement costs under the terms of her insurance policy.[6] Defendant stipulated to being brought back into the suit for purposes of discovery alone.[7]

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[4] Plaintiff was still indebted to many parties in connection with the loss of her home. Her mortgage lender filed a counterclaim for the unpaid mortgage; a contractor filed a counterclaim for breach of contract; and her landlord following the fire asserted a counterclaim for unpaid rent and damages to the rental property.

[5] Although plaintiff's loss was valued at almost $65,000, the parties apparently erred in agreeing to a total insurance pay-out of only $61,000. However, plaintiff never challenged that ruling. Ultimately, defendant remitted $6,000 directly to the city of Detroit for the demolition of plaintiff's house and $55,000 into escrow.

[6] Specifically, plaintiff contended that "[i]t [was] necessary that A.I.C.H. be joined as a party defendant to make claim to and order it to pay the replacement value of the fire loss to plaintiff's house."

[7] The case had been reassigned to a different judge by the time this order was entered.

Shortly thereafter, defendant filed a motion for summary disposition arguing that plaintiff's current action for replacement costs was barred due to the previous dismissal with prejudice and as plaintiff had failed to timely file her claim for replacement costs. In the alternative, defendant argued that plaintiff's recovery should be limited to the actual cost of her new home less the insurance proceeds already paid. In response, plaintiff asserted that the 180-day window was not a material term of the parties' contract and, therefore, her claim for further recovery should proceed. Without stating its reasoning on the record, the trial court denied defendant's motion. Defendant then filed a motion for reconsideration, arguing that plaintiff's claims were barred under MCR 2.612(C)(2), as plaintiff failed to bring a timely motion for relief from judgment. The trial court again denied defendant's motion without explanation.

The trial court subsequently ordered the parties to submit findings of fact and conclusions of law from which it would determine plaintiff's proper remedy. The court accepted the plaintiff's conclusion that she was entitled to the full cost of repair or replacement of her fire-damaged home, rather than the cost of her subsequent home purchased through a land contract. Accordingly, the trial court ordered defendant to pay plaintiff an additional $126,126.63 plus costs and attorney fees. The claims between plaintiff and the remaining defendants were later resolved, and the court's final orders were combined into one judgment on June 17, 2004.[8]

II. Summary Disposition

Defendant argues that the trial court improperly denied its motion for summary disposition, as the court had previously entered a stipulated order dismissing all claims against defendant under the insurance policy "with prejudice." We agree. Although defendant failed to identify the court rule under which it sought summary disposition, such relief is appropriate under MCR 2.116(C)(7) when an action is barred because of the entry of a prior judgment. We review a trial court's denial of a party's motion for summary disposition de novo.[9] In reviewing a motion under MCR 2.116(C)(7), "[w]e consider all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them."[10]

Pursuant to court rule, both parties may stipulate in writing to the voluntary dismissal of a court action. Although such a dismissal is generally presumed to be "without prejudice," the parties may specify that the dismissal is "with prejudice."[11] Although reached by agreement rather than following a trial, a voluntary dismissal with prejudice is a final adjudication on the

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[8] By the time the final judgment was entered, this case had again been reassigned to another judge. That judge indicated that the judgment represented a "stipulated judgment." However, the defendant in this appeal did not stipulate to the damages award it was ordered to pay to plaintiff.

[9] *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

[10] *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001), citing MCR 2.116(G)(5).

[11] MCR 2.504(A)(1)(b).

merits, barring the parties from relitigating their claims.[12] A trial court speaks through its judgments and orders, which represent the final determination of the matters submitted.[13] Judgments entered upon the consent or stipulation of the parties do not have less force than a judgment entered upon the findings of the court.[14]

The parties voluntarily stipulated, and the trial court ordered, that this judgment fully disposed of the insurance claim against defendant in this suit. Therefore, plaintiff was required to seek relief from that final judgment under MCR 2.612 before bringing further claims under the insurance policy. However, even if plaintiff had properly proceeded under the rule, we agree with defendant that plaintiff established no grounds justifying relief. Pursuant to MCR 2.612(C)(1), a trial court may grant relief from judgment on the following grounds:

> (a) Mistake, inadvertence, surprise, or excusable neglect.
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> * * *
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> (f) Any other reason justifying relief from the operation of the judgment.[15]

Plaintiff supported her claim for replacement costs merely by asserting that she was entitled to these costs under the insurance contract and that she had purchased a new home under a land contract. Plaintiff's misunderstanding of her insurance policy and the plain language of the judgment *to which she stipulated* are not the types of mistake or excusable neglect that should be remedied by this provision.[16] Plaintiff expressly agreed that defendant's payment of the insurance proceeds into the escrow account represented the full value of her claim under the policy and to the dismissal of her claims against this defendant with prejudice.

Moreover, plaintiff was not entitled to additional replacement costs under the plain and clear language of her insurance policy. We must enforce the plain and unambiguous language of an insurance contract as written.[17] Pursuant to the insurance policy, an insured may file a claim for the full cost of repairing or replacing a fire-damaged home. However, the insured may opt to

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[12] See *Limbach v Oakland Co Rd Comm*, 226 Mich App 389, 395; 573 NW2d 336 (1997), citing *Brownridge v Michigan Mut Ins Co*, 115 Mich App 745, 748; 321 NW2d 798 (1982).

[13] *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977).

[14] *Staple v Staple*, 241 Mich App 562, 564; 616 NW2d 219 (2000).

[15] MCR 2.612(C)(1).

[16] *Lark v Detroit Edison Co*, 99 Mich App 280, 283; 297 NW2d 653 (1980) (relief from judgment was not "designed to relieve counsel of ill-advised or careless decisions").

[17] *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). Only when an insurance contract is ambiguous should a court consider extrinsic evidence of the parties' intentions or construe the terms of the contract against the drafter—the insurance carrier. See *id.* at 51, 62; *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469-474; 663 NW2d 447 (2003).

file a claim for the "actual cash value" of his or her loss.[18] The policy specifically provides that, when the insured takes that option, that individual limits his or her right to additional replacement costs. Plaintiff was on notice under the plain terms of the insurance policy, and the parties' subsequent payment agreement, that she was required to file a claim for additional replacement costs within 180 days and she failed to do so. In light of her agreement to these terms, both before and during trial, we cannot find that plaintiff was entitled to relief from the judgment.[19]

Accordingly, we reverse the trial court's order denying defendant's motion for summary disposition. In light of our decision, we need not address defendant's remaining challenge to the calculation of the replacement costs.[20]

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper
/s/ Pat M. Donofrio

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[18] These provisions of the insurance policy are consistent with the insurance code, which provides that the provider of a fire insurance policy is not required to pay repair or replacement costs until such repairs or replacement have actually occurred, MCL 500.2826, and that the insurer "shall not preclude" the insured from taking a cash settlement. MCL 500.2827.

[19] Even if plaintiff was entitled to relief from judgment for her mistaken or neglectful reading of the insurance policy and stipulated judgment, she raised these grounds beyond the applicable one-year limitations period. MCR 2.612(C)(2).

[20] We note, however, that the policy clearly provides that an insured is only entitled to "the amount *actually* and necessarily spent" to secure replacement housing.